

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

DAVIS,) CV-14-3892-BLF
)
PLAINTIFF,) SAN JOSE, CALIFORNIA
)
VS.) MARCH, 23, 2017
)
CACH, LLC, ET AL,) PAGES 1-9
)
DEFENDANT.)
)
_____)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE BETH LABSON FREEMAN
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S

FOR THE PLAINTIFF: **BY: RAEON ROULSTON**
CONSUMER LAW CENTER, INC.
12 SOUTH FIRST STREET, SUITE 1014
SAN JOSE, CA 95113

FOR THE DEFENDANT: **BY: STEPHEN SCOTT**
HAYES SCOTT BONIONO ELLINGSON &
MCLAY, LLP
203 REDWOOD SHORES PKWY., STE 480
REDWOOD SHORES, CA 94065

APPEARANCES CONTINUED ON THE NEXT PAGE

OFFICIAL COURT REPORTER: SUMMER FISHER, CSR, CRR
CERTIFICATE NUMBER 13185

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

APPEARANCES CONTINUED:

FOR THE DEFENDANT:

BY: NICOLE STRICKLER

MESSER STRICKLER, LTD.

225 W. WASHINGTON ST., SUITE 575

CHICAGO, IL 60606

SAN JOSE, CALIFORNIA

MARCH, 23, 2017

P R O C E E D I N G S

(COURT CONVENED AT 9:07 A.M.)

09:07:32 4 THE CLERK: CALLING CASE 14-3892. DAVIS VERSUS CACH,
09:07:37 5 LLC, ET AL.

09:07:45 6 COUNSEL, PLEASE COME FORWARD AND STATE YOUR APPEARANCES.

09:07:45 7 MR. SCOTT: GOOD MORNING, YOUR HONOR.

09:07:46 8 STEVE SCOTT REPRESENTING CACH AND SQUARE TWO FINANCIAL.

09:07:50 9 THE COURT: GOOD MORNING.

09:07:51 10 MR. DAVIS: AND GOOD MORNING, YOUR HONOR. RAEON
09:07:53 11 ROULSTON FOR PLAINTIFF DAVIS.

09:07:54 12 THE COURT: GOOD MORNING, MR. ROULSTON.

09:07:58 13 MS. STRICKLER: YOUR HONOR, NICOLE STRICKLER ON THE
09:08:01 14 PHONE FOR MANDARICH LAW GROUP AND THE ATTORNEY DEFENDANTS.

09:08:04 15 THE COURT: GOOD MORNING, MS. STRICKLER.

09:08:06 16 MS. STRICKLER: GOOD MORNING.

09:08:07 17 THE COURT: SO WHAT SURPRISED ME IS WHEN I WAS
09:08:10 18 GREETED WITH THE BANKRUPTCY ISSUE REGARDING THE TWO CORPORATE
09:08:12 19 DEFENDANTS, CACH AND SQUARE ONE --

09:08:19 20 MR. SCOTT: SQUARE TWO.

09:08:20 21 THE COURT: WE HAVE ANOTHER SQUARE ONE. SQUARE TWO.
09:08:23 22 SO WHAT CAN YOU TELL ME ABOUT THAT, MR. SCOTT, ARE WE IN
09:08:26 23 THE STAY POSITION HERE?

09:08:27 24 MR. SCOTT: I BELIEVE SO, YOUR HONOR.

09:08:29 25 I WAS NOTIFIED JUST THE DAY BEFORE YESTERDAY THAT THEIR

09:08:34 1 BANKRUPTCY COUNSEL HAS GIVEN ME A FORM TO FILE, AND I FILED IT
09:08:37 2 WITH THE COURT. AND BEYOND THAT, I DON'T KNOW.

09:08:39 3 THE COURT: YEAH.

09:08:40 4 MR. SCOTT: BUT I THINK THE STAY IS IN PLACE.

09:08:46 5 I'M SORRY TO SAY, I THINK EVERYBODY WOULD LIKE TO GET THIS
09:08:49 6 OVER WITH, BUT I'M CERTAINLY NOT AUTHORIZED TO WAIVE ANY STAY.

09:08:52 7 THE COURT: THE LAW IS THE LAW. IF THERE'S A STAY, I
09:08:55 8 AM COMPELLED TO COMPLY WITH IT.

09:08:57 9 MR. SCOTT: YEAH, I THINK THAT'S CORRECT. I'M NOT A
09:08:59 10 BANKRUPTCY EXPERT, BUT I KNOW ENOUGH ABOUT THAT, THAT I THINK
09:09:02 11 THAT'S TRUE.

09:09:03 12 THE COURT: RIGHT. LET ME JUST ASK A COUPLE OF
09:09:05 13 CLARIFYING QUESTIONS.

09:09:06 14 MS. STRICKLER, IN THE PAPERS, IT LOOKED AS THOUGH SOME OF
09:09:11 15 YOUR CLIENTS WERE NO LONGER PARTY TO THE CLAIMS IN ARBITRATION;
09:09:16 16 IS THAT CORRECT?

09:09:16 17 MS. STRICKLER: YES, YOUR HONOR. THE INDIVIDUAL
09:09:18 18 ATTORNEYS, MS. SUTLIAN, MR. SABAWI, AND I BELIEVE THOSE WERE
09:09:28 19 THE ONLY TWO. MR. VOS IS STILL A PARTY, AND THE LAW FIRM
09:09:34 20 DEFENDANT IS A PARTY, BUT THOSE TWO WERE DISMISSED.

09:09:37 21 I WOULD LIKE THEM TO BE DISMISSED FROM THE ACTION. I
09:09:39 22 DON'T THINK THE STAY ACTUALLY ACTS AS TO THE NON-VIOLATE
09:09:43 23 PARTIES.

09:09:43 24 THE COURT: THE STAY -- I THINK THAT'S RIGHT.

09:09:45 25 HOWEVER, THEN I HAVE TO DETERMINE WHETHER I CAN GO FORWARD

09:09:50 1 ON ANY PART OF THE CASE WITH THE BANKRUPTCY PENDING, IF I HAVE
09:09:55 2 EITHER. SO THAT'S WHAT I HAVE BEEN LOOKING AT HERE.

09:09:59 3 AND AGAIN, I HAVE TO DEAL WITH THIS ISSUE BEFORE I EVEN
09:10:02 4 GET TO THE UNDERLYING ONE, ALTHOUGH I PUT QUITE A BIT OF TIME
09:10:06 5 INTO IT BECAUSE YOU PRESENTED QUITE A BIT OF MATERIAL, AS YOU
09:10:10 6 DID.

09:10:13 7 SO MR. ROULSTON, YOU AND YOUR FIRM HAVE PUT AN
09:10:16 8 EXTRAORDINARY AMOUNT OF WORK INTO THIS CASE, I RECOGNIZE THAT,
09:10:19 9 AS HAVE THE DEFENDANTS, BUT HAVING READ THE DECISIONS THAT WERE
09:10:28 10 ISSUED BY THE ARBITRATOR, IT'S CLEAR THIS HAS BEEN THOUGHTFULLY
09:10:33 11 LITIGATED FOR QUITE SOME TIME.

09:10:37 12 MR. ROULSTON, I THINK I HAVE NO CHOICE BUT TO STAY THIS
09:10:43 13 CASE AS TO CACH AND SQUARE TWO.

09:10:46 14 DO YOU DISAGREE WITH THAT?

09:10:48 15 MR. DAVIS: I ACTUALLY DON'T, YOUR HONOR. IF THERE'S
09:10:49 16 A STAY IN PLACE, THEN I THINK IT'S JURISDICTIONAL.

09:10:52 17 THE COURT: YEAH.

09:10:53 18 I THINK THAT THEN BRINGS THE LAW FIRM AND MR. VOS ALONG
09:10:57 19 WITH THEM, NOT A STAY BECAUSE OF THE BANKRUPTCY, BUT JUST AS A
09:11:02 20 COLLATERAL CONSEQUENCE OF IT.

09:11:04 21 I CAN'T CONFIRM THIS AWARD, OR IN THE ALTERNATIVE, SEND IT
09:11:11 22 BACK TO THIS COURT AND GRANT THE RECONSIDERATION AS TO TWO
09:11:16 23 PARTIES AND NOT ALL OF THEM.

09:11:19 24 FOR EXAMPLE, IF I WERE TO CONFIRM THE AWARD FOR THE TWO,
09:11:23 25 THEN I THINK THAT, YOU KNOW, THAT COULD BE A PROBLEM. BUT MORE

09:11:28 1 CONCERNING, IS IF I WERE TO BRING THE CASE BACK TO FEDERAL
09:11:31 2 COURT AS TO TWO AND DEPRIVE EACH OF THE OPPORTUNITY TO FURTHER
09:11:36 3 ARGUE THAT, I THINK THAT WOULD DEPRIVE THEM OF THEIR RIGHTS.

09:11:40 4 SO I THINK I'M IN A SITUATION HERE OF NEEDING TO, IN LIGHT
09:11:45 5 OF THE BANKRUPTCY, TO STAY THE ENTIRE ACTION. AND I DON'T KNOW
09:11:51 6 WHETHER THIS MATTER GETS REFERRED TO THE BANKRUPTCY COURT OR
09:11:54 7 WHETHER IT IS SOMETHING THAT SOMEONE WILL SEEK RELIEF FROM THE
09:11:59 8 AUTOMATIC STAY, I DON'T KNOW HOW BIG THIS COMPANY IS AND HOW
09:12:04 9 COMPLEX THE BANKRUPTCY IS. I THINK YOU INDICATED IT'S A
09:12:08 10 CHAPTER 11 REORGANIZATION, THAT CAN TAKE SOME TIME. IT'S
09:12:12 11 OBVIOUSLY BRAND NEW.

09:12:14 12 MR. SCOTT: RIGHT. THE DAY BEFORE YESTERDAY.

09:12:16 13 THE COURT: RIGHT.

09:12:18 14 MR. SCOTT: AND THERE'S A NUMBER OF COMPANIES THAT
09:12:20 15 ARE ALSO --

09:12:23 16 THE COURT: OKAY. SOME CASES JUST NEVER CAN COME TO
09:12:29 17 AN END, CAN THEY.

09:12:30 18 IT'S JUST, THE RECORD HERE IS PRETTY REMARKABLE, AND WITH
09:12:36 19 AN ULTIMATE RULING ON THE MERITS, IT EITHER SIMPLIFIES OR
09:12:40 20 COMPLICATES THINGS. BUT REALLY WHAT'S PRESENTED TO ME FROM
09:12:43 21 MR. ROULSTON IS A RULE 60(B) MOTION, WHICH AT A HIGH LEVEL, AND
09:12:47 22 PROCEDURALLY HAS ITS OWN ISSUES SEPARATE FROM THE MERITS OF THE
09:12:51 23 UNDERLYING CASE.

09:12:53 24 ALL RIGHT. I THINK THE BEST THAT I CAN DO THEN, SO THAT
09:12:57 25 THERE'S NO QUESTION THAT I'M MAKING ABSOLUTELY NO RULING ON THE

09:13:01 1 SUBSTANCE OF THIS MATTER, IS TO STAY THE PROCEEDINGS.

09:13:03 2 AND WHAT WOULD BE A REASONABLE AMOUNT OF TIME FOR YOU TO
09:13:05 3 GIVE ME A WRITTEN STATUS UPDATE ON THE BANKRUPTCY?

09:13:10 4 MR. SCOTT: THOSE CAN GO ON FOR YEARS, YOUR HONOR. I
09:13:12 5 DON'T KNOW THAT I HAVE A GOOD ANSWER TO THAT, BUT CAN I SUGGEST
09:13:17 6 MAYBE SIX MONTHS? I HONESTLY DON'T KNOW.

09:13:20 7 THE COURT: OKAY.

09:13:21 8 MR. SCOTT: IT LOOKS LIKE IT COULD BE COMPLICATED
09:13:23 9 ENOUGH.

09:13:24 10 THE COURT: OKAY.

09:13:24 11 MR. SCOTT: BUT CERTAINLY IF WE HEAR SOONER THAN
09:13:26 12 THAT, WE WILL APPRISE THE COURT.

09:13:28 13 THE COURT: ALL RIGHT.

09:13:29 14 MR. ROULSTON, ANY OBJECTION TO SIX MONTHS?

09:13:31 15 MR. DAVIS: NO, I DO SOME BANKRUPTCY PRACTICE MYSELF.
09:13:33 16 I THINK THAT'S PRETTY REASONABLE. I COULDN'T, IN GOOD
09:13:36 17 CONSCIENCE, ASK FOR LESS THAN THAT.

09:13:38 18 THE COURT: I APPRECIATE THAT. THANK YOU FOR THAT.

09:13:41 19 ALL RIGHT. THEN THE CASE IS STAYED. I WILL ASK FOR A
09:13:43 20 WRITTEN JOINT STATUS UPDATE ON THE BANKRUPTCY. SIX MONTHS FROM
09:13:48 21 NOW WOULD BE --

09:13:49 22 THE CLERK: THAT DATE WOULD BE MONDAY,
09:13:51 23 SEPTEMBER 25TH.

09:13:52 24 THE COURT: BY SEPTEMBER 25TH, ANY OTHER SIGNIFICANT
09:13:55 25 ACTION IN THE BANKRUPTCY CASE AFFECTING THIS ACTION, OF COURSE

09:13:58 1 YOU ARE FREE TO COMMUNICATE WITH ME SOONER, AND WE WILL SEE.

09:14:04 2 AND I CERTAINLY -- I DON'T KNOW WHAT IS LIKELY TO COME OF
09:14:09 3 ANY SETTLEMENT DISCUSSIONS UNDER THE UMBRELLA OF THE
09:14:13 4 BANKRUPTCY, BUT I CERTAINLY ALWAYS URGE YOU, UNDER THAT
09:14:16 5 UMBRELLA AND THE BANKRUPTCY COUNSEL, TO EXPLORE ANY METHOD OF
09:14:21 6 RESOLUTION OF THIS CASE.

09:14:23 7 OBVIOUSLY THINGS HAVE CHANGED IN YOUR CALCULATION. SO
09:14:26 8 THANK YOU BOTH FOR COMING IN, AND I GUESS I WILL HEAR FROM YOU
09:14:29 9 IN SIX MONTHS.

09:14:30 10 MR. SCOTT: THANK YOU, YOUR HONOR.

09:14:30 11 MR. DAVIS: THANK YOU, YOUR HONOR.

09:14:31 12 MS. STRICKLER: THANK YOU.

09:14:32 13 (THE PROCEEDINGS WERE CONCLUDED AT 9:14 A.M.)

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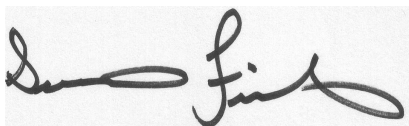
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CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT
REPORTER OF THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH
FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY
CERTIFY:

THAT THE FOREGOING TRANSCRIPT,
CERTIFICATE INCLUSIVE, CONSTITUTES A TRUE, FULL AND
CORRECT TRANSCRIPT OF MY SHORTHAND NOTES TAKEN AS
SUCH OFFICIAL COURT REPORTER OF THE PROCEEDINGS
HEREINBEFORE ENTITLED AND REDUCED BY COMPUTER-AIDED
TRANSCRIPTION TO THE BEST OF MY ABILITY.

A handwritten signature in black ink, appearing to read "Summer A. Fisher", is written over a light gray rectangular background.

SUMMER A. FISHER, CSR, CRR
CERTIFICATE NUMBER 13185

DATED: 6/18/18